



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: April 10, 2019  
MAHS Docket No.: 19-002017  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 1, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearing Facilitator.

**ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On January 16, 2019, Petitioner submitted an application for FAP benefits.
2. Petitioner's household consisted of herself and her three children.
3. Petitioner had earned income from employment (Exhibit B).
4. Petitioner had unearned income in the form of child support (Exhibit C).
5. On February 15, 2019, the Department sent Petitioner a Notice of Case Action informing Petitioner she was eligible for FAP benefits in the monthly amount of \$[REDACTED] (Exhibit E).
6. On February 21, 2019, Petitioner submitted a request for hearing disputing the Department's calculation of her FAP benefit amount.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, Petitioner submitted an application for FAP benefits on January 16, 2019. On February 15, 2019, the Department sent Petitioner notice that she was eligible for FAP benefits in the monthly amount of \$[REDACTED]. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefits (Exhibit D).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

According to the budget provided, the Department determined Petitioner had \$[REDACTED] in earned income. The Department presented a consolidated income inquiry search showing Respondent's earned income from employment (Exhibit B). The Department stated it utilized the pay warrants issued on December 13, 2018, in the amount of \$[REDACTED] and \$[REDACTED] as that was Petitioner's income in the 30 days previous to her FAP application. The amounts totaled \$[REDACTED].

In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month,

discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 6.

When looking at Petitioner's pay history, it is evident her income fluctuates significantly. Petitioner received warrants in August, October and December 2018, but not in September or November 2018. The amount that Petitioner is paid is also different from month to month. As Petitioner's income is highly irregular, the Department should have used a longer period of time to calculate Petitioner's earned income. As such, the Department failed to properly follow policy when determined Petitioner's earned income. Therefore, the Department failed to establish it properly determined Petitioner's FAP benefit amount.

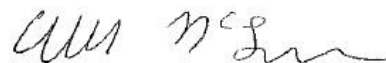
### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount.

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Petitioner's FAP eligibility as of January 16, 2019;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive as of January 16, 2019; and
3. Notify Petitioner of its decision in writing.



EM/jaf

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**Ellen McLemore**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Tara Roland 82-17  
MDHHS-Wayne-17-Hearings

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

BSC4  
M Holden  
D Sweeney